

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

IN RE:)	Bankruptcy Case No. 09-32717
)	Chapter 7
CHARLES ANTHONY NELSON and ELIZABETH)	
MORGAN NELSON,)	<u>NOTICE OF MOTION</u>
)	<u>OR OBJECTION</u>
Debtors.)	(Hearing Scheduled)

TAKE NOTICE the Debtors have filed a Motion for Sanctions for Violation of Discharge Injunction. A copy is attached hereto.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant relief sought in motion or objection, or if you want the court to consider your views on the matter, then on or before February 9, 2011, you or your attorney must:

File with the court a written request for a hearing or, if the court requires a written response, file an answer, explaining your position with the Clerk, U. S. Bankruptcy Court, 401 W. Trade Street, Room 111, Charlotte, NC 28202.

If you mail your request or response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above.

You must also mail a copy to:

Heather W. Culp, Mitchell & Culp, PLLC, 1001 Morehead Square Drive, Suite 330,
Charlotte, NC 28203

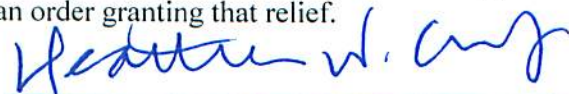
U.S. Bankruptcy Administrator, Room 200, 402 W. Trade Street, Charlotte, NC 28202-1669

Attend hearing scheduled to be held on February 17, 2011 at 9:30 a.m. at the United States Bankruptcy Court, Charles Jonas Federal Building, 401 W. Trade Street, Charlotte, NC 28202.

Take other steps required to oppose a motion or objection under local rule or court order.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Dated: 1.21.11



Heather W. Culp, N.C. State Bar No. 30386
Tel: (704) 333-0630
Fax: (704) 333-4975

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In Re:)
)
CHARLES ANTHONY NELSON and) Bankruptcy Case No. 09-32717
ELIZABETH MORGAN NELSON,) Chapter 7
Debtors.)

MOTION FOR SANCTIONS FOR VIOLATION OF DISCHARGE INJUNCTION

NOW COME the Debtors, Charles Anthony Nelson and Elizabeth Morgan Nelson, by and through undersigned counsel, and hereby move the Court pursuant to 11 U.S.C. § 524(a)(2) for imposition of sanctions against Bank of North Carolina (“BNC”). In support of this motion, the Debtors respectfully show the Court as follows:

1. The Debtors filed a petition for relief under Chapter 7 of the United States Bankruptcy Code on October 2, 2009.
2. The Debtors' discharge was ordered on January 5, 2010, and the Final Decree closing the Debtors' was entered on January 7, 2010.
3. The discharged debt at issue is a second lien on the residence that the Debtors owned on the date of the bankruptcy filing, bearing account number6557. At that time, the debt was owed to creditor Beach First, 3751 Grissom Pkwy., Myrtle Beach, SC 29577. That debt was duly scheduled on the Debtors' schedules filed with the Court. A true and correct copy of this Schedule D is attached hereto as Exhibit A.
4. Notice of the bankruptcy filing was sent to Beach First by the Bankruptcy Court and by the office of the Debtors' bankruptcy attorney. These notices were not returned.
5. Subsequent to the filing and subsequent to the entry of the discharge order, BNC contacted the Debtors about the debt referred to in paragraph 3 above, attempting to collect the discharged debt. Upon information and belief, BNC is a successor-in-interest to Beach First with respect to the debt at issue. A true and correct, redacted copy of BNC's November 7, 2010 correspondence to the Debtors is attached hereto as Exhibit B. The address for sending payments to BNC on Exhibit B is the same Grissom Parkway address that was listed for Beach First in the Debtors' petition and schedules.
6. Beach First, the holder of the debt at the time of the bankruptcy filing, was made aware of the Debtors' discharge by mail sent on January 7, 2010, per the Certificate of Notice in the bankruptcy court file.
7. By letter sent certified mail, return receipt requested, on November 16, 2010, the Debtors' bankruptcy counsel informed BNC of the discharge order and the violation of the

discharge injunction, and requested that BNC cease all contact with the Debtors ("the Warning Letter"). A true and correct, redacted copy of this correspondence is attached hereto as Exhibit C.

8. BNC received and had actual notice of the Warning Letter. *See* a true and correct copy of BNC's response to undersigned counsel, attached hereto as Exhibit D.

9. BNC has again contacted the Debtors in an attempt to collect the discharged debt at issue. *See* Exhibit E attached hereto (account number redacted).

10. BNC's actions constitute a willful violation of the discharge injunction.

WHEREFORE, the Debtors respectfully pray that the Court assess sanctions against the Creditor for willful violations of the discharge injunction.

This the 21 day of January, 2011.



Heather W. Culp
N.C. State Bar No. 30386
Attorney for Debtors
MITCHELL & CULP, PLLC
1001 Morehead Square Drive, Suite 330
Charlotte NC 28203
Tel: (704) 333-0630
Fax: (704) 333-4975
E-mail: hculp@mitchellculp.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing **NOTICE OF HEARING AND MOTION FOR SANCTIONS FOR VIOLATION OF DISCHARGE INJUNCTION** was served on the parties listed below by mailing a copy to each party in an envelope addressed as indicated below with proper postage attached and deposited in an official depository under the exclusive care and custody of the United States Post Office on the 21 day of January, 2011.

U.S. Bankruptcy Administrator
(via electronic filing)

Charles A. Nelson
Elizabeth M. Nelson
6807 Old Forge Drive
Charlotte NC 28225

Wayne Sigmon
Wayne Sigmon Attorney at Law PLLC
518 South New Hope Road
Gastonia, NC 28054
Trustee

Via certified mail, return receipt requested:
BNC Bank
3571 Grissom Parkway, Suite 100
Myrtle Beach, SC 29577

Via e-mail only to jbrown@bankofnc.com:
Johnny Brown
Vice President
Special Assets Manager
BNC Bank
3751 Grissom Parkway, Suite 100
Myrtle Beach, SC 2957



Heather W. Culp
N.C. State Bar No. 30386
Attorney for Debtors
MITCHELL & CULP, PLLC
1001 Morehead Square Drive, Suite 330
Charlotte NC 28203
Tel: (704) 333-0630
Fax: (704) 333-4975
E-mail: hculp@mitchellculp.com

B6D (Official Form 6D) (12/07)

In re Charles Anthony Nelson Elizabeth Morgan Nelson
Debtors

Case No. _____
(If known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER (See Instructions, Above.)	CODEBATOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO.6557 Beach First 3751 Grissom Pkwy. Myrtle Beach, SC 29577	J	2d lien 311 56th Avenue N N. Myrtle Beach, SC 29582 BUSINESS VALUE \$350,000.00				248,300.00	0.00
ACCOUNT NO.154 Trulliant Federal CU P.O. Box 26000 Winston-Salem, NC 27114-6000	H	Security Agreement 2004 Ford F150 (92,370 mi) VALUE \$14,000.00				14,900.00	900.00
ACCOUNT NO.153 Trulliant Federal CU P.O. Box 26000 Winston-Salem, NC 27114-6000	J	Security Agreement 2001 BMW auto (82,746 mi) VALUE \$14,000.00				13,900.00	0.00
ACCOUNT NO.143 Trulliant Federal CU P.O. Box 26000 Winston-Salem, NC 27114-6000	J	3d lien 311 56th Avenue N N. Myrtle Beach, SC 29582 VALUE \$350,000.00				7,160.00	0.00

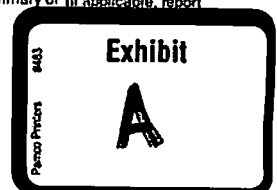
1 continuation sheets attached

Subtotal >
(Total of this page)

Total >
(Use only on last page)

\$ 284,260.00	\$ 900.00
\$	\$

(Report also on Summary of (if applicable, report Schedules)





3751 Grissom Parkway, Suite 100
Myrtle Beach, SC 29577
(843) 626-2265

HOME EQUITY LINE OF CREDIT STATEMENT

Statement
Closing Date
11/07/10

Account Number	Payment Due Date	Past Due Amount	Current Amount Due	Minimum Payment Due	New Balance
6557	1/20/09	2,289.87	0.00	2,289.87	163,109.50

CHARLES A NELSON JR
ELIZABETH M NELSON
6807 OLD FORGE DR
CHARLOTTE NC 28225-7644

PLEASE RETURN TOP PORTION OF STATEMENT WITH YOUR PAYMENT - PAYABLE TO

BNC BANK

Instead of cash or checks, use your VISA Check Card for your vacation needs. It's convenient, fast, and easy. And accepted for purchases anywhere you see the VISA symbol.

Account Number	Closing Date	Credit Limit	Available Credit	Payment Due Date	Minimum Payment Due
6557	11/07/10	250,000.00	0.00	1/20/09	2,289.87

Posting Date	Description of Transactions	Transaction Amount	Running Balance
10/06/10	PREVIOUS PRINCIPAL BALANCE		163,109.50
10/06/10	Interest Rate Change	4.000000%	163,109.50
10/06/10	Daily Periodic Rate	0.010958%	163,109.50
10/06/10	Corresponding APR *	4.000000%	163,109.50

Payments/Credits
0.00

Other Charges
99.00

Finance Charge Due
831.58

Average Daily
Balance
163,109.50

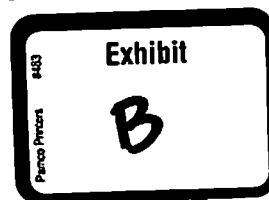
Days in
Cycle
33

Send Payments To:

BNC Bank
3751 Grissom Parkway, Suite 100
Myrtle Beach, SC 29577

If you have questions in regard to your account, please call (843) 626-2265

Notice: The Annual Percentage Rate and Daily Periodic Rate may vary.
See Reverse Side for Important Information.



MITCHELL & CULP, PLLC

Attorneys at Law

1001 Morehead Square Drive, Suite 330 | Charlotte, North Carolina 28203
Telephone (704) 333-0630 | Facsimile (704) 333-4975 | www.mitchellculp.com

Richard M. Mitchell*
Heather W. Culp**

Christopher J. Culp†
Of Counsel

November 16, 2010

(Via Certified Mail, Return Receipt Requested)

BNC Bank
3751 Grissom Parkway, Suite 100
Myrtle Beach, South Carolina 29577

RE: Charles A. Nelson, Jr. & Elizabeth M. Nelson
Your Account No. 6557
Bankruptcy Case No. 09-32717

Dear Sir or Madam:

Our clients have filed a Chapter 7 case in the United States Bankruptcy Court for the Western District of North Carolina. The Order for Discharge and Final Decree was entered on January 5, 2010.

Our records indicate that you were notified of the filing of the petition and of the Discharge and Final Decree.

You as a creditor are automatically stayed from any action attempting to collect your debt. You have recently sent a letter to my clients requesting immediate payment which violates the discharge injunction. Such an action is grounds for contempt of the United States Bankruptcy Court.

Should you further contact Charles or Elizabeth Nelson, the matter will be brought before the United States Bankruptcy Court.

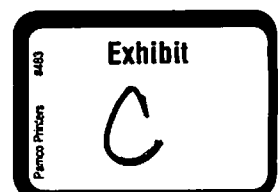
Very truly yours,



Heather W. Culp

cc: Charles and Elizabeth Nelson (via e-mail only)

* Board-Certified Specialist in Business & Consumer Bankruptcy Law
** Also admitted in Kentucky
† Also admitted in Georgia



Heather Culp

From: Heather Culp
Sent: Monday, November 22, 2010 2:33 PM
To: 'Andy Nelson'
Subject: FW: Charles and Elizabeth Nelson
Attachments: Image001.jpg

Andy, see below; this should be the end of it from BNC.

Heather W. Culp
Mitchell & Culp, PLLC
Tel: (704) 333-0630, ext. 22

From: Johnny Brown [REDACTED]@bankofnc.com]
Sent: Monday, November 22, 2010 2:01 PM
To: Heather Culp
Subject: RE: Charles and Elizabeth Nelson

Thank you Heather. We are correcting our system as we speak, and apologize for the error.

Johnny Brown
Vice President
Special Assets Manager
BNC Bank
3751 Grissom Parkway, Suite 100
Myrtle Beach, S C 29577
843-839-7770
843-839-7870 (fax)
[REDACTED]@bankofnc.com

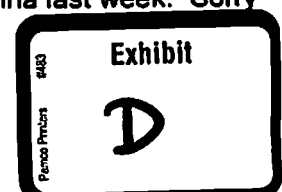


The place to be...

for all the right reasons.

From: Heather Culp [mailto:hculp@mitchellculp.com]
Sent: Monday, November 22, 2010 1:46 PM
To: Johnny Brown
Subject: Charles and Elizabeth Nelson

Attached is the letter that should have been attached to my letter to Bank of North Carolina last week. Sorry that it didn't make it out of my office to you.



Let me know if you need anything else.

Heather W. Culp
Mitchell & Culp, PLLC
Tel: (704) 333-0630, ext. 22

Bank of North Carolina. The place to be...for all the right reasons.

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PO Box 1148
Thomasville, NC 27361-1148
800-262-7175

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LOAN STATEMENT

Page

CHARLES A NELSON JR
ELIZABETH M NELSON
6807 OLD FORGE DR
CHARLOTTE NC 28225-7644

ACCOUNT NUMBER	6557
STATEMENT CLOSING DATE	1/17/11
PAYMENT DUE DATE	1/20/09
PAST DUE AMOUNT	2,289.87
CURRENT DUE AMOUNT	0.00
MINIMUM PAYMENT DUE	2,289.87
NEW BALANCE	163,109.50

HELOC CONV ONLY

PLEASE RETURN TOP PORTION OF STATEMENT WITH YOUR PAYMENT - PAYABLE TO **BANK OF NORTH CAROLINA**

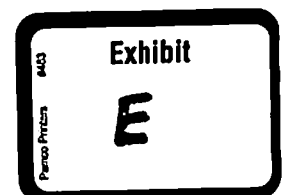
ACCOUNT NUMBER	6557	STATEMENT CLOSING DATE	1/17/11
PAYMENT DUE DATE	1/20/09	MINIMUM PAYMENT DUE	2,289.87
CHECKS & ADVA	0.00	PAYMENTS & CREDITS	0.00
OTHER CHARGES	6,861.12		

DATE	CHECK #	DESCRIPTION OF TRANSACTIONS	AMOUNT	RUNNING BALANCE
12/16/10		PREVIOUS PRINCIPAL BALANCE		163,109.50
12/16/10		Interest Rate Change	4.000000%	163,109.50
12/16/10		DAILY PERIODIC RATE	0.010958%	163,109.50
12/16/10		CORRESPONDING APR *	4.000000%	163,109.50

Send Payments To:

BANK OF NORTH CAROLINA
PO Box 1148
Thomasville, N.C. 27361-1148

Payments received at this address prior to 5:00 p.m. each banking day will be credited as of that date
If you have questions in regard to your account, please call (800) 262-7175



Note: See reverse side for important information regarding your rights to dispute errors on your statement.
The Annual Percentage Rate and Daily Periodic Rate may vary.